IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4812 of 2007()

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CRIME NO.496/07 OF MANARKKAD POLICE STATION

PETITIONER: 4TH ACCUSED;

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NITHEESH, AGED 16, (MINOR),
S/O.SHOBA, AKKIPPADAM, PAYANDAM P.O.,
MANNARKKAD, REPRESENTED BY HIS MOTHER,
SMT.SHOBA, W/O.KALLINGAL VESYAKUTTAN
@ VELLAYUDHAN, AKKIPPADAM, PAYANDAM P.O.,
MANNARKKAD.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS: STATE:

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THE STATE OF KERALA, REPRESENTED BY
SHO MANNARKKAD POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007 ALONG WITH B.A.NO.4814/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. Nos.4812 & 4814 OF 2007**

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Dated this the 14th day of August, 2007

**ORDER**

Applications for anticipatory bail. The petitioners are accused 1 to 4. Altogether, there are four accused in a crime registered, inter alia, under Sec.326 of the IPC. The crux of the allegations is that the petitioners – mother and three male children, allegedly assaulted the victim on the road in front of their house armed with an iron rod and caused fracture to the de facto complainant. The alleged incident took place at 5 p.m. on 15/7/07. Prior animosity is the alleged motive. That motive arose from an innocuous dispute in the course of a game of carom board on some earlier date. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. The petitioners were not

aggressors; but were victims of aggression. As a matter of fact, the de facto complainant and others had trespassed into the residential building of the petitioners and had attacked the petitioners. A crime had been registered later under Secs.452 and 324 of the IPC against the de facto complainant and others. They had already been enlarged on bail, it is submitted.

3. The learned Public Prosecutor opposes the applications for anticipatory bail. The learned Public Prosecutor submits that going by the allegations about the nature of the occurrence the time and the alleged motive, the two incidents do not appear to be a case and counter case. Even assuming that to be so, there is absolutely no justification for the prayer for anticipatory bail in this case. This is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am in agreement with the learned Public Prosecutor that this is a fit

case where the petitioners must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate. They must then seek regular bail in the ordinary course. I find no features available in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. It is not necessary, at this stage, to make a final and authentic pronouncement as to who was the aggressor and as to whether the two cases are in the nature of a case and counter case.

5. In the result, these bail applications are dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

6. The learned counsel for the petitioner in B.A.No.4812/07 submits that the petitioner is a juvenile. If that be so, certainly the provisions of the Juvenile Justice (Care and Protection of Children) Act will have to be followed by the Investigating

Officer as also the learned Magistrate. No materials have been placed before me to confirm that the said petitioner i.e., the 4th accused is a juvenile. The petitioner shall be at liberty to place the relevant materials on that aspect before the Investigating Officer or the learned Magistrate.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge